

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
WOOD FABRICATORS, INC.,

Appellant,

v.

SOUTHWEST AIR POLLUTION  
CONTROL AUTHORITY,

Respondent.

PCHB No. 84-325

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
ORDER

This matter, the appeal of a Notice of Violation and \$250 civil penalty for permitting and/or maintaining an open fire containing prohibited materials at a business site in Woodland, came on for hearing April 4, 1985, before the Pollution Control Hearings Board; Lawrence J. Faulk and Gayle Rothrock (presiding) at Vancouver. Pursuant to WAC 371-08-155 respondent agency elected a formal hearing. The proceedings were tape-recorded.

Respondent Southwest Air Pollution Control Authority (SWAPCA) was represented by its counsel, David Jahn. Appellant Wood Fabricators,

1 Inc., was represented by its plant manager, Tracy Griggs.

2 Witnesses were sworn and testified. Exhibits were examined and  
3 admitted. Oral argument was heard. From the testimony, evidence, and  
4 contentions of the parties, the Board makes these

5 FINIDNGS OF FACT

6 I

7 Respondent, pursuant or RCW 43.21B.260, has filed with this Board  
8 a certified copy of its Regulations, which are noticed.

9 II

10 On November 1, 1984, in the early afternoon, appellant's plant  
11 manager caused or allowed an outdoor fire in the yard at Wood  
12 Fabricators, Inc., in Woodland, appoximately eight feet in diameter  
13 and five feet high and containing processed lumber materials and wood  
14 pallets.

15 III

16 The plant manager was not in possession of a lawful burn permit  
17 from the Town or from respondent Agency. He had telephoned the Town  
18 Clerk on two occasions to inquire about permissible burning and was  
19 ultimately left with the impression he could conduct open burning in  
20 the plant yard on that early November day. November 1 is within the  
21 autumn burn season in Cowlitz and Clark counties. Respondent Agency  
22 publicizes the burn season through the news media just prior to the  
23 start, and, again, just prior to the close of the season.

24 IV

25 Respondent's inspector spotted the subject fire, proceeded to the

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW & ORDER  
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1 site and noted the dimensions and character of the fire, as described  
2 above. The plant manager was told he was maintaining an impermissible  
3 fire and should extinguish it. The temperature was cold and it was  
4 heavily raining.

5 The inspector issued a field notice of violation that afternoon.  
6 Appellant was surprised to receive a violation notice. The Inspector  
7 made some notes.

8 V

9 Thereafter respondent's inspector visited the Town Hall to  
10 ascertain whether or how appellant felt he was given permission to  
11 maintain an open fire. He was advised by the Clerk that she had  
12 probably talked to the plant manager but was under the impression he  
13 was inquiring about "backyard burning."

14 VI

15 Neither appellant plant manager nor his employer, Wood  
16 Fabricators, Inc., has a record of previous violations of air  
17 pollution regulations.

18 VII

19 On November 5, 1984, appellant plant manager received a formal  
20 notice of violation and \$250 civil penalty from which he took an  
21 appeal to this Board on behalf of Wood Fabricators, Inc. The appeal  
22 was officially received December 3, 1984.

23 VIII

24 Any Conclusion of Law which is deemed a Finding of Fact is hereby  
25 adopted as such.

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW & ORDER  
PCHB No. 84-325

1 From these Findings of Fact the Board comes to these

2 CONCLUSIONS OF LAW

3 I

4 The Board has jurisdiction over these persons and these matters.  
5 Chapters 43.21B and 70.94 RCW.

6 II

7 The Legislature of the State of Washington has enacted this  
8 particular policy on outdoor fires:

9 It is the policy of the State to achieve and maintain  
10 high levels of air quality and to this end to  
11 minimize to the greatest extent reasonably possible  
12 the burning of outdoor fires. Consistent with this  
13 policy, the legislature declares that such fires  
14 should be allowed only on a limited basis under  
15 strict regulation and close control. (RCW 70.94.740).

16 Pursuant to this and other legislative authority, the respondent  
17 has adopted general regulations, at Section 400-035, which implements  
18 close control of open burning under permit and only at certain seasons  
19 of the year for residential burning of natural vegetation, not to  
20 include materials such as lumber and finished wood products waste.

21 Appellant's failure to obtain a burn permit for a commercial fire  
22 and to limit burning to authorized wastes is a violation of  
23 respondent's General Regulations, Section 400-035. Under our state's  
24 open burning policies it is not safe to assume that commercial wood  
25 waste may be casually disposed of by open burning.

26 III

27 Appellant's position on November 1, 1984, stems partly, if not  
fully, from a miscommunication with the Town Clerk of Woodland about

1 the times, places, and circumstances under which open burning is  
2 allowed. His attempt to become aware of rules for open burning  
3 failed. This incident is appellant's first recorded violation of air  
4 pollution laws, and for these two reasons part of the penalty should  
5 be suspended.

6 IV

7 Any Finding of Fact which is deemed a Conclusion of Law is hereby  
8 adopted as such.

9 From these Conclusions the Board enters this  
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ORDER

The subject notice of violation and civil penalty of \$250 is affirmed; provided, however, that \$225 of the penalty is suspended on condition that appellant not violate respondent's regulations for one year after this Order becomes final.

DONE this 24th day of May, 1985.

POLLUTION CONTROL HEARINGS BOARD

Gayle Rothrock  
GAYLE ROTHROCK, Vice Chairman

(See Dissent)  
LAWRENCE J. FAULK, Chairman

(Wick Dufford)  
WICK DUFFORD, Lawyer Member

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FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
ORDER

(Dissenting Opinion)

FINIDNGS OF FACT

I

Respondent, pursuant to RCW 43.21B.260, has filed with this Board a certified copy of its Regulations, which are noticed.

II

On November 1, 1984, in the early afternoon, appellant's plant manager caused or allowed an outdoor fire in the yard at Wood Fabricators, Inc., in Woodland, approximately eight feet in diameter and five feet high and containing processed lumber products and wood

1 was inquiring about "backyard burning."

2 VI

3 Neither appellant plant manager nor his employer, Wood  
4 Fabricators, Inc., has a record of previous violations of air  
5 pollution regulations.

6 VII

7 On November 5, 1984, appellant plant manager received a formal  
8 notice of violation and \$250 civil penalty from which he took an  
9 appeal to this Board on behalf of Wood Fabricators, Inc. The appeal  
10 was received by this Board on December 3, 1984.

11 VIII

12 Any Conclusion of Law which is deemed a Finding of Fact is hereby  
13 adopted as such.

14 From these Findings of Fact the Board comes to these

15 CONCLUSIONS OF LAW

16 I

17 The Board has jurisdiction over these persons and these matters.  
18 Chapters 43.21B and 70.94 RCW.

19 II

20 Respondent SWAPCA has the burden of proof in this case.

21 III

22 The Legislature of the State of Washington has enacted this  
23 particular policy on outdoor fires:

24 It is the policy of the State to achieve and maintain  
25 high levels of air quality and to this end to  
26 minimize to the greatest extent reasonably possible  
the burning of outdoor fires. Consistent with this



policy, the legislature declares that such fires should be allowed only on a limited basis under strict regulation and close control. (RCW 70.94.740).

#### IV

Pursuant to this and other legislative authority, the respondent has adopted general regulations, at Section 400-035, which provides in relevant part:

No person shall ignite, cause to be ignited, permit to be ignited, or suffer, allow, or maintain any open fire within the jurisdiction of the Authority, except as provided in this Regulation.

...

(2) Open burning may be done under permit:

(a) Burning permits may be provided by the local fire department, fire district or Washington State Department of Natural Resources.

(b) No permit shall be issued unless the Control Officer is satisfied that:

(i) No practical alternate method is available for the disposal of the material to be burned. (The Authority has a written Outdoor Fire Policy describing times, areas and kinds of permitted open fires.)

(ii) No salvage operation by open burning will be conducted.

(iv) No animals will be disposed of by burning.

(v) No material containing asphalt, petroleum products, paints, rubber products which normally emits dense smoke or obnoxious odors will be burned.

#### V

There are three issues for the Board to resolve in this matter. First, did appellant conduct an illegal burn? Secondly, did appellant

burn a prohibited material? Three, should appellant's good faith effort to find out about burning regulations be taken in account?

## VI

For the first issue, Respondent bases its alleged violation upon a distinction between individual households and commercial establishments. Households are allowed to conduct a burn, but non-households are not. This distinction is not clearly made in Respondent's regulations. Inasmuch as the remedy sought is punitive in nature, the regulation must clearly delineate and give notice of the desired distinction. It is the duty of governmental regulatory agencies to make its rules clear and understandable to the public. When agencies fail in this duty, citizens should not be punished for failure to comply. Richard Peters v. SCAPCA, PCHB No. 354 (1973). We, therefore, conclude that Appellant's burn was not unlawful. Woodland Park Trailer Court v. SCAPCA, PCHB No. 614 (1974).

## VII

Regarding the second issue, the facts show that untreated lumber was the only item burned on the day in question. Untreated lumber is not specifically listed in Regulation I, Section 400-035(27)(b)(v) quoted above as a prohibited material. Thus, the only way it could be considered a prohibited material is if the fire emitted "dense smoke or obnoxious odors." This was clearly not the case here and so we conclude that appellant did not burn a prohibited material. SWAPCA did not sustain the burden of proof and prove that untreated lumber is a prohibited material. We therefore conclude that appellant did not

1 burn a prohibited material.

2 VIII

3 As to the third issue, the Pollution Control Hearings Board has  
4 established a policy (see PCHB Nos. 868 and 869, Lloyd's of  
5 Washington, Inc. v PSAPCA) that the good faith efforts of private  
6 citizens to comply with regulatory provisions cannot be ignored by the  
7 regulatory agency involved and such effort will be considered by this  
8 Board. Such good faith efforts were present in this case and involved  
9 receiving assurances from a responsible government official that it  
10 was "ok" to burn. Appellant was entitled to rely on the Town Clerk's  
11 statement. To hold otherwise would be saying that a citizen cannot  
12 rely on the statement of a responsible government official. For those  
13 reasons the Board believes that the penalty should be vacated.

14 IX

15 This incident points out the confusion in respondent's Regulation  
16 I concerning open burning. The Board believes that SWAPCA should be  
17 required to (1) adopt the burn seasons as part of their Regulation I  
18 and distinguish between household and commercial burning and publish  
19 same; (2) require the inspectors to carry copies of this part of  
20 Regulation I with them for easy distribution to the citizens; and (3)  
21 introduce this handbill in all future proceedings before this Board.

22 IX

23 Any Finding of Fact which is deemed a Conclusion of Law is hereby  
24 adopted as such.

25 From these Conclusions the Board enters this

26 Dissenting Opinion  
27 PCHB No. 84-325

ORDER

The subject notice of violation and civil penalty of \$250 is vacated.

DONE this 6 day of May, 1985.

 T/7/85  
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LAWRENCE J. FAULK, Chairman